

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

PHILLIP CHARLES MCGILBERRY, #R4349

PETITIONER

VERSUS

CIVIL ACTION NO. 2:02cv127KS-JMR

DOLAN WALLER, et al.

RESPONDENTS

ORDER

This cause comes before this court, sua sponte, to consider the unsigned pleading styled “petition for extraordinary writs” [document #7] and the “motion for post conviction collateral relief and out of time appeal writ of error corain [sic] nobis” [document #8], filed by the petitioner in this civil action on August 11, 2005, and September 19, 2005, respectively.

A final judgment dismissing this civil action for the petitioner’s failure to exhaust his available state remedies was entered on June 4, 2002 [document #5]. Since this action is closed the petitioner’s unsigned pleading styled “petition for extraordinary writs” [document #7], is not proper. In addition, as noted the document does not contain an original signature as required for filing by the FEDERAL RULES OF CIVIL PROCEDURE.

The Court also notes that the pleading styled “motion for post conviction collateral relief and out of time appeal writ of error corain [sic] nobis” [document #8] filed September 15, 2005 is not proper. Upon review of the filing, the Court has determined that the document is a copy of an original document sent to the Mississippi Supreme Court for filing. In addition, as noted the document is a copy and does not contain an original signature as required for filing by the FEDERAL RULES OF CIVIL PROCEDURE.

If the petitioner wishes to file another petition for habeas relief, he must do so in a new civil action. The new civil action will be assigned a different civil action number. In other words, the

petitioner's petition must **not** reflect civil action number 2:02cv127KS-JMR in order to proceed with a new petition for habeas relief. However, the Court notes that petitioner is currently appealing the ruling dismissing his subsequent habeas corpus petition, with prejudice, civil action number 2:02cv824KS-JMR. Accordingly, it is

ORDERED:

1. That petitioner's unsigned pleading styled "petition for extraordinary writs" [document #7], filed August 11, 1005, is denied as not properly filed.
2. That pleading styled "motion for post conviction collateral relief and out of time appeal writ of error corain [sic] nobis" [document #8] filed September 15, 2005, is denied as not properly filed.

This the 13th day of March, 2006.

s/John M. Roper
CHIEF MAGISTRATE JUDGE